

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No.: 1:22cv23000

ED GONZALEZ AYALA,
Plaintiff,

vs.

DERMAFORCE PARTNERS, LLC,
Defendant.

/

NOTICE OF REMOVAL

Please take notice that Defendant, DERMAFORCE PARTNERS, by and through the undersigned counsel, pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1332, hereby removes the above captioned action from the Eleventh Judicial Circuit in and for Miami-Dade County, State of Florida, to the United States District Court, Southern District of Florida, on the following grounds:

1. Defendant, DERMAFORCE PARTNERS (“Defendant”), a foreign corporation, is the sole named Defendant in a civil action filed by Plaintiff, ED GONZALEZ AYALA (“Plaintiff”) in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, on June 1, 2022. *See Plaintiff’s Complaint attached hereto as Exhibit “1.”* The Complaint alleges a claim for negligence arising out of an automobile accident that occurred in Miami-Dade County, Florida on August 24, 2021. The Plaintiff alleges that he was a passenger in a vehicle leased by Dermaforce Partners. *Exhibit 1 at ¶ 4.*

2. Thereafter, a summons was issued and served on Defendant on August 23, 2022. *See Summons attached hereto as Exhibit “2.”* Defendant is contemporaneously filing its Answer and Affirmative Defenses with this Notice of Removal. *See Answer attached hereto as Exhibit “3.”*

3. Pursuant to 28 U.S.C. § 1446(a) and Rule 10(c), Fed.R.Civ.P., copies of all process, pleadings, and orders served upon the Defendant (to date, the Complaint and summons) are attached as Exhibits 1 and 2 and are incorporated by reference herein.

4. Plaintiff alleged in his Complaint that he “was and is a resident of Miami-Dade County, Florida.” *Exhibit 1* at ¶ 2.

5. At all times material hereto, Defendant was and is registered in Delaware, with its principal place of business in Phoenix, Arizona. *See affidavit attached hereto as Exhibit “4.”*

6. Plaintiff alleges in his Complaint that “[t]his is an action for damages in excess of the sum of Thirty Thousand (\$30,0000) Dollars, exclusive of interest, costs and attorney’s fees.” *Exhibit 1* at ¶ 1.

7. Plaintiff also filed on June 1, 2022 in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County a Civil Cover Sheet estimating that the claim is over \$100,000.00. *See civil cover sheet attached hereto as Exhibit “5.”*

8. Plaintiff received \$500,000.00 in uninsured motor benefits and \$250,000.00 in personal injury/no-fault benefits as a result of the other driver’s, Irwin Rockwell’s, negligence and not Dermaforce Partners.

9. Discovery is currently being conducted; however, based on the information received to date, Plaintiff suffered extensive injuries. The Plaintiff was a passenger in a vehicle being driven by, Wellington Rivera, who died in the accident. The vehicle was hit by a DUI driver going the wrong way on I-95 in Miami-Dade County. Therefore, the amount in controversy will clearly be in excess of \$75,000.00.

10. As set forth in detail below, this Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332(a), since the amount in controversy in this action exceeds the sum of

\$75,000.00, exclusive of interest and costs, and is between citizens of different States. Defendant therefore provides Notice of Removal from the Eleventh Judicial Circuit in and for Miami-Dade County, State of Florida, to the United States District Court, Southern District of Florida. Concurrent with the filing of this Notice of Removal with this Court, Defendant will provide Notice of Removal to the Plaintiff, through the attorney of record in the state court action as required by 28 U.S.C. § 1446(d), as well as notice to the Clerk of the State Court in and for the Eleventh Judicial Court in and for Miami-Dade County, State of Florida.

FACTS SUPPORTING BASIS FOR REMOVAL

At the time of the filing of this action, and at all times material, Defendant is a limited liability company that was registered in the State of Delaware and with principal place of business in the State of Arizona. *See Exhibit 4.* Plaintiff alleged in his Complaint that he “is a resident of Miami-Dade County, Florida.” *See Exhibit 1 at ¶ 3.*

Plaintiff alleged in his Complaint that “[t]his is an action for damages in excess of the sum of Thirty Thousand Dollars, exclusive of interest, costs, and attorney’s fees. *See Exhibit 1 at ¶ 1.* Plaintiff filed a Civil Cover Sheet alleging that the amount of the claim is in excess of \$100,000.00. *See Exhibit 5.*

The Plaintiff suffered multiple injuries and has claimed the following items of damages: 1) past, present, and future medical and related expenses; 2) past, present, and future aggravation of a pre-existing condition; 3) past, present, and future physical and mental pain and suffering; 4) past, present and future shame, humiliation, scarring, disability, discomfort, disfigurement, and the inability to lead a normal life; and 5) past, present and future loss of earnings and earnings capacity.

Based on medical reports, the Plaintiff suffered multiple orthopedic injuries, including fractures to multiple body parts and emergency surgery following a head-on collision on August

24, 2021, wherein the vehicle in which he was a passenger fell over the I-95 northbound express lane Fly-Over and became engulfed in flames upon impact. Medical bills for the Plaintiff exceed \$75,000.00.

August 23, 2022 was the earliest date that Defendant was served with any pleading or other paper in this action indicating that the jurisdictional requirements were met. *See Exhibit 1 and Exhibit 4.* Accordingly, Defendant timely filed this Notice of Removal within thirty days thereafter.

As Defendant was served with the Complaint and Summons on August 23, 2022, this notice of removal is timely filed pursuant to 28 U.S.C. § 1446(b) within 30 days.

MEMORANDUM OF LAW

28 U.S.C. § 1441 Removal of civil actions, states:

“(a) Generally. – Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

Pursuant to 28 U.S.C. § 1332(a)(1), “The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different States.” 28 U.S.C. § 1332(a)(1). Corporations shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business. See 28 U.S.C. § 1332(c)(1).

In this case, diversity jurisdiction exists pursuant to § 1332(a)(1). Plaintiff and Defendant are citizens of different states (Florida and Delaware, respectively). *Exhibits 1 and 4.* Further, the amount in controversy exceeds \$75,000. *Exhibits 1 and 5.*

Accordingly, pursuant to 28 U.S.C. § 1441, based on the evidence provided hereto, Defendant timely removes this action to this Court as it is a civil action between citizens of different states and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interests and costs.

Respectfully submitted,

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Certificate of Service on Following Page

CERTIFICATE OF SERVICE

I HEREBY CERTIFY 20th day September, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day to Ramona L. Tolley, Cohen & Newmark, PLLC, Counsel for Plaintiff, 74 NE 4th Avenue, Suite 1, Delray Beach, FL 33483, rt@cohennewmark.com, in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to received electronically Notices of Electronic Filing.

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